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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : GIEFER
Serial No : 09/600,832
Filed : July 21, 2000
For : SLOT COVER...
Art Unit : 3682
Examiner : V. Luong
Dated : January 22, 2003

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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REPLY BRIEF

This Reply Brief is in response to the Examiner's Answer of December 2, 2002.

Applicant thanks the Examiner for entering the Amendment of September 11, 2002 which canceled claim 31. Applicant also thanks the Examiner for correcting the status of the claims in view of the entered Amendment.

The Examiner's Answer indicates that Appellant's issues 4 through 6 relate to a petitionable subject matter and not to appealable subject matter. Applicant notes that issues 4 through 6 are very closely related to issues 2 and 3. Applicant respectfully requests that the Board consider reviewing issues 4 through 6 since they might be easily addressed based on the Board's decision with regard to issues 2 and 3. Applicant feels that it may be more efficient for the Board to address issues 4 through 6 based on the Board's determination of issues 2 and 3, than for additional Patent Office personnel to additionally review the application and review

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issues 4 through 6. Appellant realizes that the Board does not have to consider issues 4 through 6, and only suggests that they may be considered at this time, in order to increase efficiency of prosecution.

Appellant wishes to comment on the Examiner's response to the arguments. For the Board's convenience, Appellant responds to the Examiner's comments in the order as presented in the Examiner's Answer.

CLAIM 36:

1). There appears to be some disagreement as to what reference 3 represents in Andronis. Appellant notes that the translation of Andronis describes on page 5 line 3 from the bottom that reference 3 is a recess. It appears that the Examiner is not referring to the recess when using reference 3 of Andronis, but to structure that is adjacent the recess 3 in Fig. 4 of Andronis, and appears similar to the louver in Fig. 2 of the present application. It appears that the Examiner might be referring to the structure in Fig. 4 of Andronis which wraps around elements 39 - 42. From Applicant's understanding of Andronis, this structure is represented by reference 38 in Fig. 5 of Andronis. Appellant notes however that element 38 of Andronis has been equated with the louver guide of the present invention in the rejection. It is therefore Applicant's position that the supporting statements for the rejection do not fully support the rejection.

2). Claim 36 sets forth a louver movably connected to the louver guide. It is Appellant's position that the phrase "A movable with B" is not the same as "A movably

connected to B". "Movable with" indicates a fixed connection, while "movably connected" indicates A is movable separately and independently of B while A is still connected to B. The Examiner's statement that band 38 is moved with lever 6 of Andronis, therefore does not anticipate claim 36 setting forth a louver movably connected to the louver guide.

3). As indicated above, the fact that element 14 of Andronis is moved with lever 6, does not anticipate a louver movably connected to a louver guide. Also Appellant does not understand why element 14 of Andronis is stated to operate similar to Applicant's rollers 3.1, 3.2, 4.1 - 4.4 and gears 3.3 - 3.6. Element 14 of Andronis appears to be quite different from rollers or gears.

4). As indicated above, the fact that element 15 of Andronis is moved with lever 6, does not anticipate a louver movably connected to a louver guide.

5). The Examiner's Answer states that common sense dictates that when the lever in Andronis is moved, elements 15 and 39 - 42 are moved therewith. Applicant's understanding of Andronis leads Applicant to agree that element 15 of Andronis moves with the lever. Elements 39 - 42 however do not appear to move with the lever, and are instead stationary with elements 38, 44, as shown in Figs. 5 - 7 sliding over elements 39 - 42. It is Applicant's position that bands 38 or 44 rotate around the box having elements 39 - 42 in the corners.

The portion of the translation cited in the Examiner's Answer refers to the slot cover element. Applicant believes Andronis intends the slot cover element in this portion to be elements 4, 38, 44, and not elements 39 - 42. Therefore this portion of Andronis does not support that common sense dictate elements 39 - 42 are movable with the lever.

6). Here the Examiner's Answer describes guide elements 14, 15, 38 - 46 and louver 3. Applicant is uncertain if the Examiner's Answer is now equating all elements 14, 15, 38 - 46 with the louver guide of claim 36. Applicant notes that the Examiner's Answer on page 5 lines 6 and 7 indicates that Andronis shows a band 3 or 38. Appellant needs clarification of how elements 3, 38, and their similar structure 44 - 46 are equated with the elements of claim 36.

Applicant maintains that elements 39 - 42 do not move with elements 38/44 - 46 of Andronis. Furthermore, it is Appellant's position that elements 39 - 42 are fixed with element 2, and elements 38/44 - 46 slide circumferentially around, and axially along, elements 39 - 42.

7). Appellant acknowledges that claim 11 of Andronis describes inserting a preassembled module unit. Appellant does not find the last paragraph on page 7 describing inserting a unit, but instead describes the operation which would occur after insertion of a unit.

Inserting a unit does not fully anticipate a movable connection. Elements can be inserted into an area or section without being connected to the area or section. If elements are connected during or after insertion, the elements can be rigidly connected and do not need to be movably connected. Applicant's understanding of Andronis indicates that after elements 39 - 42 are inserted, they are fixed to element 2.

8). Element 14 is described in the last paragraph on page 7 of Andronis as a "bearing cage" and a "longitudinal shifting path". It is Applicant's position that element 14 cannot be both of these elements, and that the second occurrence of "14" should be "13". The Examiner's statement that the phrase "longitudinal shifting path 14" is correct, appears to contradict the

Examiner's statement that elements 14 and 15 form a universal joint. Applicant believes that reference 14 of Andronis cannot be both a "path" and a "joint".

9). Andronis describes guide elements preferably designed integrally with the housing, page 3 lines 12 - 13. If guide elements are integral, they are not movably connected. A teaching of integral is therefore not a teaching of "movably connected", and does not lead to a "movably connected" structure.

10). Elements 39 - 42 of Andronis are not similar enough to the louver guide of claim 36, to behave similarly. Andronis and the present application specifically state different behaviors.

11). Page 9 paragraph 3 of the Appeal Brief was provided to better understand possible and preferred structures of claim 36. Applicant does not require this specific structure to be present in the claims in order to define over Andronis.

12). Andronis does not specifically state that elements 39 - 42 are movably connected to element 2. An artisan would know, as evidence by a standard textbook, that elements 39 - 42 of Andronis are not movably connected to element 2.

13). If an artisan can use a standard textbook to interpret Figs. 4 - 7 of Andronis, then that artisan can use Fig. 3 of Andronis. Applicant notes that the courts have decided that references are considered as to what they fairly teach as a whole. It is Applicant's position that Fig. 3 of Andronis is significant in interpreting Figs. 4 - 7 of Andronis.

Finally). The type of connection is set forth in claim 36 as being movable. A movable type connection is not described in Andronis.

CLAIM 37:

The typographical error in claim 37 is clearly incorrect. It is Applicant's position that the error is not significant enough to prevent or preclude at least partial examination. It appears that partial examination has been done assuming claim 37 depends from claim 36. Applicant desires to correct the error in claim 37 in accordance with this assumption. Such a correction should not involve additional search or consideration.

CLAIM 26:

Element 44 of Andronis is described by Andronis as a flexible band, page 7 line 24, and appears to be an alternative variant of element 38. Element 38 appears to be the flexible band that surrounds elements 39 - 42 in Fig. 4, and appears to be the structure the Examiner represents by reference 3 of Andronis. Therefore element 44 cannot be equated with the louver guide of the present invention.

CLAIM 27:

The Examiner's Answer with respect to claim 27 appears to equate element 44 of Andronis with the elastic louver portion of the louver of the present invention. In the rejection of claim 26, element 44 is compared to the louver guide which is a separate structure.

Claim 27 also sets forth that the elastic properties are in a circumferential direction of the closed loop. Element 44 of Andronis only has to be flexible in a radial direction. Therefore the flexibility of a band 44, 38, 3 of Andronis does not fully anticipate the elastic limitations of

claim 27.

ISSUE 2:

1). Appellant claims a first direction and a second direction substantially perpendicular to the first direction. This claim feature broadly includes all first and second directions that meet the substantially perpendicular limitation, and all the other limitations on the directions in the claim. Therefore the actual direction is immaterial as long as the other direction limitations are met.

2). One does not have to guess Applicant's directions, instead one can use any directions that meet all of the limitations of the claim. Broadness does not indicate vagueness.

3). The Examiner's Answer states that the issue is whether the claim specifically points out the essential structural cooperative relationship of the elastic portion and the louver, plus the other elements in the claims. Claim 27 sets forth that the elastic portion is part of the louver, and has elastic properties in the circumferential direction of the closed loop. The location and elastic relationship are therefore set forth. These are sufficient structural cooperative relationships.

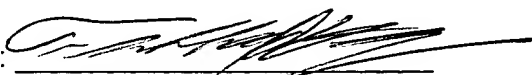
4). Claim 33 broadly covers sensing selector lever positions using Hall sensors and permanent magnets. The claims should correspondingly be interpreted broadly. Applicant notes that the courts have decided in *Ex Parte Hartmann*, 186 USPQ 366 (1974) at 364 Board of App. that if an Applicant is claiming what he regards as his invention, there is only one basic ground for rejecting a claim under 35 USC § 112, namely, that the language employed does not

set out and circumscribe the particular area sought to be covered with reasonable degree of precision and uncertainty. It is Applicant's position that Hall sensors and permanent magnets are precise and certain terms. It is Appellant's position that the use of Hall sensors and permanent magnets is also a precise and certain limitation. A person of ordinary skill in the art would be able to ascertain whether or not a device used, or did not use Hall sensors or permanent magnets. Therefore it is Applicant's position that claim 33 describes the present invention with precision and certainty, and is in accordance with 35 USC § 112.

Finally). Applicant thanks the Examiner for second guessing the dependency of claims 37 and 38. Applicant assumes the Examiner guessed claim 37 depended from claim 36. If this is correct, amending claim 37 to depend from claim 36 should not cause additional consideration or search. Applicant apologizes for the inconvenience caused by this typographical error, and respectfully requests a chance to correct this error. Applicant understands that such errors cause inconveniences. It is not Applicant's standard practice to allow such errors, and Applicant will endeavor to prevent such errors from occurring in the future.

For all of the above reasons, Applicant respectfully requests that the Board indicate allowable subject matter in this application.

Respectfully submitted
For Applicant,

By: 
Theobald Dengler
Reg. No. 34,575

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Enclosed: Duplicate copies of Reply Brief
Request for Oral Hearing in Triplicate
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SCARBOROUGH STATION
SCARBOROUGH, NEW YORK 10510-0827
(914) 941-5600

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